

The Examiner has objected to the title, which has now been amended. The Examiner objected to the drawings. Formal drawings will be submitted once the application has been allowed.

The Examiner has requested various updates in the specification. While the update to the now granted U.S. Patent on page 4 has been made, and the reference to Appendix A has been deleted, it is respectfully submitted that the cross-reference to a related application is inappropriate here where the current application does not depend upon the 08/861,792 application, which is a continuation of the now granted '789 patent, and is not necessary.

The claims in this case had been rejected as being unpatentable under 35 U.S.C. §103(a) over Coffey et al, U.S. Patent 5,675,510, in view of the Meyers CDMA article. For the reasons explained below, it is respectfully submitted that the rejection of the claims should be reconsidered and withdrawn.

The Coffey et al article, as the Examiner notes, discloses a computer-based system for collecting data regarding the use of software products running on a plurality of computers and from corresponding users, all across a communications network. That usage data is then analyzed to produce information useful for marketing. In addition, information requests can be communicated directly to the users. Coffey et al do not, however, teach that their system, while useful in marketing, can offer upgraded features to the users being monitored or interrogated based on an identified pattern from the analyzed usage data.

The CDMA article discloses a change from an analog cellular system to a digital cellular system which is performed in the Los Angeles area. The Examiner appears to base his remarks primarily on the fact that, at lines 36-37 of the provided text, "the operator will hand-pick several hundred existing customers based on their usage patterns and offer them CDMA upgrades." From this, the Examiner makes, what Applicants respectfully suggest is a "leap," that the CDMA article discloses offering greater cellular communications functionality based on past usage patterns. In fact, what the CDMA article appears to be doing is to enable a human to hand-pick based on cellular use (probably the number of minutes used by any particular user) and offer that user a completely new service, one that will require not only new equipment, but the use of an entirely new digital network. This new service is not an upgrade of the existing product function on his analog phone, but is comparable to buying a new piece of equipment. Indeed, at no time would the original equipment been able to perform digital calls. Accordingly, this is not an instance which, as required by the claims, enables "greater functionality for a product function". This allows the "opportunity" to buy a new product. This is not the upgrade of an existing service, it is indeed a new service.

Moreover, the Coffey et al reference does not suggest, teach, or disclose the necessity, need, or advisability of upgrading an existing product. The computer users in the Coffey et al system are being monitored as to what products they use and presumably how they use them to enable marketing people to target

those and newer products to optimize their sales. There is no suggestion that the new sales would be directed at the old user or the user whose operations and functions have been "monitored". There is no suggestion that the data will be automatically used in a computer or data processor environment to offer the upgrades (note that the CDMA reference also uses hand-picked, not automatically selected approaches) and the Coffey et al reference does not provide for any automatic analysis of the data but only for apparently automatic collection of the data. Further, neither the CDMA nor the Coffey et al reference suggests automatic communication to the user of the availability of the greater functionality. The references appear to require the intervention of the human being to perform the analysis as well as the communications.

It is also important to note that Coffey et al appears to collect data from and to provide the results of data collected to, only a plurality of users so that the patterns of an individual user are neither recorded by Coffey et al nor are they used individually to direct marketing activity at the user. This is also important since it again is contrary to the hand-picked data used in the CDMA article in which the data is provided on a user by use basis. The two systems are not simply not compatible with each other, do not suggest the need to adapt the two separate concepts to each other, and accordingly are not an effective prior art combination.

As a result, therefore, it is respectfully submitted that the independent claims, claims 1, 12, 18, 21, 22, and 25

should all be found to be patentable for at least these reasons. In addition, those claims dependent upon them provide additional features which are important to different aspects of the claimed invention.

With regard to the other claims, for example claim 6, the CDMA article does not indicate whether a threshold is used. It only describes whether a particular usage pattern (not defined) has been identified. With regard to claim 7, in the instance of Coffey et al and the CDMA article, the fuzzy algorithm does not appear to be a logical or reasonable design choice since there is no suggestion that this computer implemented approach will be used in the manual analysis provided by either system or that either system, even if computerized, would employ this sort of algorithm to determine the applicability of the analysis.

With regard to claim 11, Coffey et al disclose collecting data regarding user decisions and uses, but do not disclose when to invoke various software products as a result of those decisions. The work performed by the marketing people is not detailed in the reference and the reference does not identify when to provide an upgraded software product to anyone based on the received data. Further, the so-called personal assistant system referred to by the Examiner, and described in application 08/326,635, while it includes a software driven application, does not include solely software, and further, would not normally be within the products which are available to Coffey et al for data collection. That is, the personal assistant is an application

which is always running independent of the user's use of the "computer". It is the functions available to the user which are implemented, and which may change as a result of the user's use of the telephone and of the application. This is not the typical operating system approach rendered by Coffey et al.

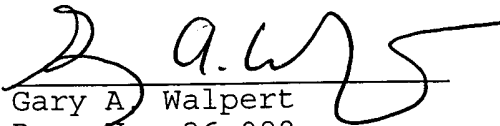
With regard to claim 17, the Examiner suggests that the CDMA reference discloses offering greater functionality dependent on the usage patterns. In fact, the reference discloses offering a different product based on usage patterns, the selection criteria being unknown and performed by the human being. The users here may have started with a product having a lower functionality (an analog cell phone) but, the fact is, that the digital cell phone was not available at the time the analog phone was acquired, and therefore could not have been purchased even if they had wanted to. Thus, given the product choice available, there is no reason to suggest the users were started at a lower functionality level.

For the reasons noted above, it is respectfully submitted that the claims, as amended, define patentable subject matter and should be passed to issue in due course. Neither the Coffey et al reference nor the CDMA article define or describe, teach, or suggest a system wherein the user can be automatically apprised of additional functionality based on a data processor implemented system as described in claims herein.

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Respectfully submitted,

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